IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.335 OF 2005

Union of India. ...Petitioner

vs.

M/s.S.K.Patel & Co. ...Respondent.

Ms.S.I.Shah, for Petitioner.

Mr.K.G.Munshi i/b. Crawford Bayley & Co. for Respondent.

CORAM: D.K.DESHMUKH, J.

DATED: 6th NOVEMBER,2006

P.C.:

1. I have heard the learned Counsel appearing for both the sides at length. Perusal of the Award shows that the learned Arbitrator relying on the terms in the contract and the judgment of the Supreme Court in the case "M/s.Hind Construction Contractors Vs. State of Maharashtra" has held that time was not the essence of the contract, and therefore, the petitioner was not justified in terminating the contract for failure of the contractor to complete

the work within the time which was specified in the contract. Perusal of the Award shows that before the learned Arbitrator it was a submission made on behalf of the petitioner itself that the petitioner had given time to the contractor after 21.4.1995, which was the date fixed in the contract to complete the work, but the contractor did not complete the work. The learned Arbitrator relying on the Supreme Court's judgment in the case of "M/s.Hind Construction Contractors" has held that the petitioner has given extension of time in order to give an opportunity to the contractor to complete the work, then it was necessary for the petitioner to give notice intimating that now time is being treated as essence of the contract and termination of the contract without giving such notice, according to the learned Arbitrator, is invalid. I do not find any error in the finding recorded by the learned Arbitrator.

2. The learned Counsel appearing for petitioner submits that the the learned Arbitrator has not considered the correspondence between the parties. Apart from the fact that I find that the correspondence between the parties has been referred to and has been considered by the learned Arbitrator, it is an admitted position that after 21.4.1995 and

till the letter informing the contractor that the contract is terminated, there was no correspondence between the parties and admittedly, after 21.4.1995 there was no notice issued by the petitioner making time essence of the contract. Therefore, looking from any point of view, considering the extremely limited jurisdiction of this Court to interfere with the Award made by the learned Arbitrator, the petition cannot be entertained. The petition is rejected.